

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

RONALD L. CAMPBELL,	)	No. CV-08-134-JPH
	)	
Plaintiff,	)	ORDER ADOPTING REPORT AND
	)	RECOMMENDATION
v.	)	(Ct. Rec. 59)
	)	
CITY OF SPOKANE, BRIAN	)	
ECKERSLEY, and KEVIN KING,	)	
	)	
Defendants.	)	

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BEFORE THE COURT is the Report and Recommendation to deny defendants' motion for summary judgment as to all federal claims and grant summary judgment as to all state claims (Ct. Rec. 59). Defendant's moved for summary judgment on July 23, 2009 (Ct. Rec. 36). On October 9, 2009, plaintiff filed a response (Ct. Rec. 47). Magistrate Judge James P. Hutton heard oral argument on defendants' motion on December 16, 2009 (Ct. Rec. 58). His report and recommendation, filed on December 23, 2009 (Ct. Rec. 59), recommends defendants' summary motion be denied as to all federal claims. On January 11, 2010, defendants timely filed objections to this portion of the magistrate judge's report (Ct. Rec. 60).

Defendants raise objections rearguing points rejected by the magistrate judge. First, the magistrate judge found plaintiff shows genuine issues of material fact exist with respect to his claim defendants used excessive force, namely, whether plaintiff

1 posed an immediate threat to the officers' safety and whether he  
2 resisted arrest (Ct. Rec. 59 at 13-14). Defendants fail to show  
3 the determination is incorrect.

4 Second, plaintiff claims defendants failed to adequately  
5 train and supervise its officers in the use of force,  
6 specifically, when removing an object from a subject's mouth (Ct.  
7 Rec. 59 at 14), a claim defendants deny. The magistrate judge  
8 found "issues involving the use of force, after arrest, in the  
9 drive stun tasing, in squeezing (or choking) a subject's throat  
10 and/or using a flashlight to pry open their jaw, are matters  
11 better left to the trier of fact in determining if the absence of  
12 training and supervision directly and proximately resulted in the  
13 excessive use of force against the Plaintiff." The magistrate  
14 judge also noted, correctly, "whether the absence of any policy  
15 amounts to deliberate indifference to the constitutional rights of  
16 citizens is generally a jury question sufficient to preclude  
17 summary judgment" (Ct. Rec. 59 at 14). Defendants' objection is  
18 not well taken for the reasons cited in the report.

19 Last, defendants object the report fails to address qualified  
20 immunity (Ct. Rec. 60 at 9-11). Defendants fail to recognize the  
21 "determination of whether a reasonable officer could have believed  
22 lawful the particular conduct at issue" (Ct. Rec. 60 at 9, citing  
23 *Sloman v. Tadlock*, 21 F.3d 1462, 1467 (9<sup>th</sup> Cir. 1994) depends on  
24 the trier of fact's determination of the officers' conduct at the  
25 time of arrest.

26 Having reviewed the Report and Recommendation and the files  
27 and records herein, and finding the objections are not well taken,  
28 the Court adopts the magistrate judge's report and recommendation

1 in its entirety.

2 Accordingly, **IT IS HEREBY ORDERED:**

3 1. Defendants' Motion for Summary Judgment (Ct. Rec. 36) as  
4 to all federal claims is **DENIED**,

5 2. Defendants' Motion for Summary Judgment as to all state  
6 claims is **GRANTED** (Ct. Rec. 36).

7 Plaintiff's state claims are dismissed.

8 **IT IS SO ORDERED.** The District Court Executive is directed  
9 to enter this Order and forward copies to counsel for the parties  
10 and the magistrate judge.

11 **DATED** this 3rd day of February, 2010.

12  
13 s/Robert H. Whaley

14 ROBERT H. WHALEY  
15 United States District Judge  
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